

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

CME

Mailed: October 17, 2014

Opposition No. 91214578

LeMans Corporation

v.

LeMar Xavier Lewis

Christen M. English, Interlocutory Attorney:

On October 17, 2014, the Board convened a telephone conference with the parties to discuss Opposer's request for Board intervention, filed September 23, 2014, and Applicant's motion to extend, filed October 1, 2014. Tara Vold and Paul Williamson appeared on behalf of Opposer, Applicant appeared *pro se* and assigned interlocutory attorney Christen English participated on behalf of the Board.

As an initial matter, Applicant is representing himself in this proceeding (*see* Docket # 14), but he indicated that he continues to consider whether to hire an attorney to represent him in this proceeding. The Board advised Applicant that it is generally recommended that parties retain experienced trademark practitioners to represent them in Board proceedings. The Board also indicated that Applicant will be expected and required to comply with all applicable rules and procedures, including those relating to service of papers,

as set forth in Trademark Rule 2.119, regardless of whether Applicant retains counsel to enter an appearance in this proceeding.¹

Many of the Board's orders and Opposer's filings mailed to Applicant have been returned as undeliverable. During the telephone conference, Applicant provided the following updated address for himself:

33 West Trade Street
Suite 2100
Charlotte, NC 28202

The Board's records have been updated to reflect the above address as the address of record for Applicant. Applicant is reminded that he is required to maintain an accurate address with the Board. "If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party." TBMP § 117.07.

In addition, the parties agreed to accept formal service of papers by email pursuant to Trademark Rule 2.119(b)(6). Opposer's email address for service is trademark@vwiplaw.com and Applicant's email address for service is lemarlewis@hotmail.com. The parties should note that because they have agreed to service of papers via email they may not take advantage of the five additional days for service provided under Trademark Rule 2.119(c) and may not stipulate to circumvent this requirement. *See McDonald's Corp. v. Cambridge Overseas Development Inc.*, 106 USPQ2d 1339, 1340 (TTAB 2013).

¹ Information for parties representing themselves *pro se* is provided at the end of this order.

Next, the Board explained that Applicant, through his then counsel, filed an answer in this proceeding on March 3, 2014. As such, Applicant's motion, filed October 1, 2014, seeking to extend his time to file an answer is moot and will be given no further consideration.

The deadline for initial disclosures has passed and Applicant has not served his initial disclosures on Opposer. Accordingly, Applicant is allowed until **October 31, 2014** to serve his initial disclosures on Opposer. Applicant also acknowledged that he has not responded to Opposer's first set of interrogatories and document requests served on Applicant's former counsel on April 24, 2014.² Applicant is allowed until **November 14, 2014** to serve responses to Opposer's discovery requests.

As discussed during the teleconference, dates in this proceeding are reset as follows:

Expert Disclosures Due	2/15/2015
Discovery Closes	3/17/2015
Plaintiff's Pretrial Disclosures Due	5/1/2015
Plaintiff's 30-day Trial Period Ends	6/15/2015
Defendant's Pretrial Disclosures Due	6/30/2015
Defendant's 30-day Trial Period Ends	8/14/2015
Plaintiff's Rebuttal Disclosures Due	8/29/2015
Plaintiff's 15-day Rebuttal Period Ends	9/28/2015

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within

² Applicant acknowledged during the teleconference that he has copies of Opposer's discovery requests.

thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

Pro Se Information

Although Patent and Trademark Rule 11.14 permits a person to represent himself, it is strongly advisable for a party who is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The United States Patent and Trademark Office (USPTO) cannot aid in the selection of an attorney. As the impartial decision maker, the Board may not provide legal advice; it may provide information solely as to procedure.

Any party who does not retain counsel should be familiar with the authorities governing this proceeding, including the Trademark Trial and Appeal Board Manual of Procedure (TBMP), and the Trademark Rules of Practice (37 C.F.R. Part 2), both accessible directly from the Board's web page: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>. Also on the Board's web page are links to ESTTA, the Board's electronic filing system⁴ at <http://estta.uspto.gov>, and TTABVUE, for case status and prosecution history at <http://ttabvue.uspto.gov/ttabvue>.

Trademark Rules 2.119(a) and (b) require that every paper filed in the USPTO in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney. Proof of service must be made before the paper will be considered by the Board. Accordingly, copies of all papers filed in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. *See* TBMP § 113.03. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a certificate of service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via email to: (name and address of opposing counsel or party).

Signature _____

Date _____

Strict compliance with the Trademark Rules of Practice, and the Federal Rules of Civil Procedure (where applicable), is required of all parties before the Board, whether or not they are represented by counsel. *See McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006).

This *inter partes* proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery

depositions, interrogatories, requests for production of documents and things, and requests for admission, to ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs. The Board does not preside at the taking of testimony; all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.
